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21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN FRANCISCO DIVISION**

24 RICHARD DENT, ET AL.,
25 Plaintiffs,

26 v.

27 NATIONAL FOOTBALL LEAGUE,
28 Defendant.

CASE NO.: 3:14-CV-02324-WHA

JOINT CASE MANAGEMENT
STATEMENT [Civ. Local R. 16-9]

Date: March 21, 2019

Time: 8:00 a.m.

Dept.: 12, The Honorable William Alsup

1 Plaintiffs and Defendant the National Football League (hereinafter “Defendant” or “NFL”)
 2 (collectively, the “Parties”) respectfully submit this JOINT CASE MANAGEMENT
 3 STATEMENT pursuant to Civil Local Rule 16-9, Rules 16 and 26(f) of the Federal Rules of Civil
 4 Procedure, the Standing Order for All Judges of the Northern District of California-Contents of
 5 Joint Case Management Statement (as revised Nov. 1, 2018), and this Court’s February 14, 2019
 6 Notice Continuing Hearings, and state as follows.

7 **1. Jurisdiction and Service**

8 The basis for the Court’s jurisdiction is 28 U.S.C. § 1332(d)(2). The Parties agree that the
 9 Court has personal jurisdiction over the Defendant and that venue is proper in this Court.
 10 Defendant has waived service of summons and filed its initial pleadings. No parties remain to be
 11 served.

12 **2. Facts**

13 Plaintiffs allege, among other things, that Defendant directly and indirectly supplied players
 14 with, and encouraged players to use, certain medications and other pharmacological agents,
 15 including but not limited to opioids, non-steroidal anti-inflammatory drugs, and local anesthetics,
 16 in violation of Federal law criminalizing and regulating the use and distribution of such
 17 medications and common law duties. Plaintiffs allege that such conduct began as early as 1970,
 18 and possibly earlier, and continued through at least 2012.

19 Defendant denies Plaintiffs’ allegations, and contends that Plaintiffs are not permitted to
 20 rely on allegations of purported “indirect” conduct on the part of the NFL in light of the Ninth
 21 Circuit’s order that “on remand, any further proceedings in this case should be limited to claims
 22 arising from the conduct of the NFL and NFL personnel—not the conduct of individual teams’
 23 employees.” *Dent v. Nat’l Football League*, 902 F.3d 1109, 1121 (9th Cir. 2018).

24 **3. Legal Issues**

25 The following legal issues are disputed at the pleading stage of this litigation:

- 26 • Whether Plaintiffs’ negligence claims are barred, in whole or in part, by the applicable
- 27 statutes of limitations;
- 28 • Whether Plaintiffs have adequately stated their negligence claims under Rules 8 and 12
- of the Federal Rules of Civil Procedure;

- Whether Plaintiffs' negligence claims, as pled, comply with the Ninth Circuit's decision in this action, which ordered that "on remand, any further proceedings in this case should be limited to claims arising from the conduct of the NFL and NFL personnel—not the conduct of individual teams' employees" (*id.*);¹ and
- Whether Plaintiffs can certify a class, or sub-classes, under Rule 23 of the Federal Rules of Civil Procedure.

The Parties anticipate that other significant legal issues will be disputed as the litigation progresses.

4. Motions

(a) The Parties' Statement Regarding Filed and Pending Motions

On January 15, 2019, Defendant moved to dismiss Plaintiffs' Third Amended Complaint in its entirety on the grounds that Plaintiffs have failed to state a claim and that their claims are time-barred. There are no other pending motions.

(b) The Parties' Position Regarding Future Motions

The Parties agree that, should the NFL's motion to dismiss be denied, the Parties would brief the issue of class certification. The NFL also anticipates that it will file other motions, including one or more motions for summary judgment, at the appropriate time.

5. Amendments

None.

6. Evidence Preservation

The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"). On July 23, 2014, and again on August 11, 2014, the Parties (through their counsel) engaged in a preliminary conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure to discuss issues of document preservation and the proper sequencing of discovery. In that initial conference, the Parties discussed the proposed schedule for sequencing early motion practice and discovery outlined in Sections 4 and 17.

The NFL has taken steps to preserve potentially relevant evidence. The NFL sent a document preservation notice to all pertinent NFL employees. In addition, the NFL has sent a

¹ Plaintiffs do not believe this is a legal issue in dispute; Defendant, however, does.

notice to each of the 32 member clubs informing it of the litigation and requesting that each club take steps to preserve potentially relevant evidence.

7. Disclosures

The Parties made the following initial disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure on September 26, 2014:

(a) Defendant provided:

- A good faith list of applicable insurance carriers;
- Insurance declaration sheets in the NFL's possession;
- Medical records for the named Plaintiffs in the NFL's possession while making a good faith effort to obtain the same from the individual teams;
- NFL policies issued or in force since January 1, 2004, relating to the procurement, distribution and administration of controlled substances and other pharmacological agents; and
- A sampling of NFL policies issued or in force since January 1, 2004, relating to the supervision, training and qualification of doctors, trainers and other medical personnel that are in the NFL's possession, or a statement that no such documents are in the NFL's possession.

(b) Plaintiffs provided:

- Health Insurance Portability and Accountability Act of 1996 ("HIPAA") releases for the named Plaintiffs permitting the NFL to access, copy and produce each plaintiff's medical records, including but not limited to drug testing records, substance abuse counseling records and hospital records;
- Medical records for the named Plaintiffs in their possession; and
- A list of medical providers for the named Plaintiffs.

8. Discovery

In 2014, the Parties agreed that, other than initial disclosures and subject to evidence preservation, discussed *supra*, subject to the Court's view of "an early practicable time" (Fed. R. Civ. P. 23(c)(1)(A)), discovery would proceed in two phases. The first phase would begin after the Court ruled on the NFL's motion(s) to dismiss and the parties would, within seven (7) days of that ruling, confer pursuant to Rule 26(f) of the Federal Rules of Civil Procedure regarding class discovery. That first phase would include certain third-party discovery, requests for admission,

1 document production, interrogatories, expert witness class certification testimony, and deposition
2 testimony. The Parties would thereafter brief class certification issues and, depending on the
3 Court's ruling, the Parties would at that time confer to determine what remaining discovery would
4 be necessary to prepare the case for trial.

5 On August 13, 2014, the Parties submitted to the Court a Stipulated Protective Order that
6 would govern the production of discovery material in the case. On August 14, 2014, the Court
7 entered its Order Approving Stipulated Protective Order Subject to Stated Conditions.

8 The Parties then proceeded to conduct discovery in this action. Among other discovery,
9 Plaintiffs and Defendant both served—and responded to—written discovery and made certain
10 productions of documents before the Court ruled on the NFL's Motions to Dismiss in 2014.
11 Plaintiffs also conducted depositions of certain witnesses pursuant to a Person Most
12 Knowledgeable Deposition Notice served upon Defendant. After the Court dismissed Plaintiffs'
13 claims, the Parties ceased their discovery efforts and Plaintiffs appealed this Court's order.

14 While Plaintiffs' appeal was pending, Plaintiffs' counsel filed a separate litigation on behalf
15 of thirteen former professional football players—all putative members of the proposed class here—
16 against the NFL's member clubs in *Evans, et al. v. Arizona Cardinals, et al.*, Civil Case No.: 3:16-
17 CV-01030-WHA (the "*Evans Action*"). Substantial discovery was conducted by Plaintiffs in the
18 *Evans Action*. Between the *Dent* and *Evans* actions, the NFL and its member clubs have already
19 put forth thirty (30) witnesses for deposition and produced more than 420,000 pages of documents.

20 In light of the foregoing, Defendant submits that a limited discovery period is all that is
21 needed for both parties to ready the case for motions regarding class certification and for trial.

22 As discovery has and likely will continue to involve disclosure of Plaintiffs' private
23 medical records, implicating the players' privacy interests under the Health Insurance Portability
24 and Accountability Act of 1996, the Parties have taken appropriate steps to minimize the impact on
25 privacy rights.

26 9. Class Action

27 Per above, the parties propose that, if Defendant's dismissal motion is denied, the parties
28 would begin discovery designed to allow Plaintiffs to seek class certification at the earliest

1 practicable time. Plaintiffs estimate that class discovery can be concluded in nine (9) months from
2 the Court's ruling on the NFL's last motion to dismiss; the NFL believes that discovery can be
3 completed in four (4) months (*see* Section 17, *infra*).

4 Plaintiffs state that pursuant to Civil L.R. 16-9(b)(1), they intend to maintain this case as a
5 class action under Rules 23(b)(1) and (b)(3) of the Federal Rules of Civil Procedure.

6 Plaintiffs further state that, pursuant to Civil L.R. 16-9(b)(2), the class consists of
7 themselves and all other similarly situated individuals pursuant to Fed. R. Civ. P. 23, consisting of
8 all Players, which for class purposes shall mean anyone listed on one of the Clubs' rosters from the
9 point in a season where a final roster decision is announced (for the 2016 season, this would have
10 been when the 53-man roster was announced on September 3, 2016) through the completion of that
11 season, who received Medications, which for class purposes shall include, but not be limited to,
12 Naprosyn, Indocin, Vioxx, Prednisone, and Toradol, from an NFL Club.

13 Plaintiffs further state that the alleged class period is from January 1, 1968 through the
14 present.

15 Plaintiffs further state that pursuant to Civil L.R. 16-9(b)(3), they are entitled to maintain a
16 class action under Rules 23(b) for the following reasons:

17 The members of the Class are so numerous that joinder of all members of any Class would
18 be impracticable. Plaintiffs reasonably believe that Class members number thousands of people in
19 the aggregate. The names and addresses of Class members are identifiable through documents
20 maintained by Defendant.

21 This action involves common questions of law or fact, which predominate over any
22 questions affecting individual Class members, including, among others:

23 (a) Whether Defendant provided or administered Medications to the Class
24 Members?

25 (b) Whether Defendant violated the Controlled Substances Act's requirements
26 governing acquisition of controlled substances?

27 (c) Whether Defendant violated the Controlled Substances Act's requirements
28 governing storage of controlled substances?

1 (d) Whether Defendant violated the Controlled Substances Act's requirements
2 governing distribution of controlled substances?

3 (e) Whether Defendant violated the Food and Drug Act's requirements
4 governing distribution of prescribed medications?

5 (f) Whether the provision or administration of Medications to Class Members,
6 as described above, violated state pharmaceutical laws regulating the acquisition, storage and
dispensing of Medications?

7 (g) Whether the Class Members provided informed consent authorizing the
8 provision or administration of Medications?

9 (h) Whether Defendant owed a duty and breached that duty to Class Members
10 by violating the federal and state laws described herein?

11 (i) Whether Defendant's breach of a duty to Class Members by failing to
12 comply with federal and state laws governing the provision and administration of Medications
proximately caused Plaintiffs' and Class Members' damages?

13 In addition, Defendant engaged in a common course of conduct giving rise to the legal
14 rights sought to be enforced by Plaintiffs individually and on behalf of the members of the Class.
15 Similar or identical statutory and common law violations, business practices, and injuries are
16 involved. Individual questions, if any, pale by comparison, in both quantity and quality, to the
17 numerous common questions that dominate this action.

18 Further, Plaintiffs' claims are typical of the claims of the other members of the Class
19 because, among other things, Plaintiffs and the other Class Members were injured through the
20 substantially uniform misconduct by Defendant. Plaintiffs are advancing the same claims and legal
21 theories on behalf of themselves and all other Class members, and there are no defenses that are
22 unique to Plaintiffs. The claims of Plaintiffs and those of other Class Members arise from the same
23 operative facts and are based on the same legal theories. Plaintiffs are also adequate
24 representatives of the classes because their interests do not conflict with the interests of the other
25 Class Members they seek to represent; they have retained counsel competent and experienced in
26 complex class action litigation, and Plaintiffs have and will continue to prosecute this action
27 vigorously. The Class Members' interests will be fairly and adequately protected by Plaintiffs and
28 their counsel.

Finally, class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this matter as a class action. The damages, injuries, harm, or other financial detriment suffered individually by Plaintiffs and the other members of the Class are relatively small compared to the burden and expense that would be required to litigate their claims on an individual basis against Defendant, making it impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

Defendant, on the other hand, disputes the foregoing and intends to demonstrate why this case is not suited for resolution through a class action lawsuit in its class certification briefing.

10. Related Cases

On February 6, 2019, the United States Court of Appeals for the Ninth Circuit affirmed this Court's decision granting summary judgment in *Evans, et al. v. Arizona Cardinals, et al.*, Civil Case No.: 3:16-CV-01030-WHA. Mandate was issued on February 28, 2019.

The Parties also anticipate some members of the prospective class(es) may have pending workers' compensation cases against Defendant that may involve related issues.

11. Relief

Plaintiffs request that the Court award Plaintiffs:

- compensatory damages against the NFL;
- punitive damages against the NFL;
- such other relief as may be appropriate; and
- their prejudgment interest, costs and attorneys' fees.

12. Settlement and ADR

The Parties have complied with ADR Civil Local Rule 3-5, and have filed their respective

ADR Certifications. Plaintiffs contend that through the course of the *Evans* litigation, Plaintiffs' counsel has received thousands of relevant documents and taken dozens of depositions related to the allegations at issue. That discovery is more than sufficient for the Parties to meaningfully discuss settlement, and the fact that this litigation has been ongoing for close to five (5) years and that related litigation was ongoing for almost four (4) years militates in favor of at least discussing whether a settlement can occur. Plaintiffs thus would request that the Court allow the Parties to discuss settlement or alternative dispute resolution.

Defendant does not believe settlement discussions are appropriate at this juncture.

13. Consent to Magistrate

Plaintiffs consent to proceed before a Magistrate Judge.

In light of the Court's extensive experience and familiarity with this case and other related litigation, Defendant does not consent to proceed before a Magistrate Judge.

14. Other References

Given that the Plaintiffs purport to act on behalf of a class of retired NFL players, the case is not proper for reference to the Judicial Panel on Multidistrict Litigation. The Parties believe it is premature to assess any potential references to a special master.

15. Narrowing of Issues

Beyond the initial motion practice described in Section 4 above, the Parties do not think they can presently narrow the issues.

16. Expedited Trial Procedure

The parties do not think this case is appropriate for handling under the Expedited Trial Procedure of General Order 64.

17. Scheduling

(a) Plaintiffs' Proposed Schedule

The Plaintiffs respectfully propose the following schedule:

<u>Motion/Event</u>	<u>Date</u>
NFL's Motion to Dismiss	January 16, 2019
Hearing on Motion to Dismiss	March 21, 2019

<u>Motion/Event</u>	<u>Date</u>
Parties to Confer Pursuant to FRCP 26(f)	Within 14 days after the Court's ruling on the Initial Motion to Dismiss
Disclosures of Experts for Class Certification	Within 90 days after the FRCP 26(f) Conference
Disclosures of Rebuttal Experts	Within 45 days after Expert Disclosures
Disclosure of Reply Experts (If Necessary)	Within 30 days after Rebuttal Disclosures
Motion for Class Certification	9 months after FRCP 26(f) Conference ²
Hearing on Class Certification	60 days after submission of class certification issues to Court
Parties to Confer Pursuant to FRCP 26(f) Regarding Remaining Discovery	14 days after Court's ruling on class certification
Non-Expert Discovery Cutoff Date	9 months after Court's ruling on class certification
Parties to Serve Lists of Issues on Which They Will Offer Expert Testimony	14 days after non-expert discovery cutoff date
Last Date for Designation of Expert Testimony and Disclosure of Full Expert Reports Under FRCP 26(a)(2)	28 days after service of lists of issues on which expert testimony will be offered
Opposition Expert Reports	21 days after initial expert disclosures
Reply/Rebuttal Expert Reports	14 days after opposition expert reports
Expert Discovery Cutoff	30 days after deadline for reply reports
Dispositive Motions Due	60 days after expert discovery cutoff
Final Pretrial Conference	14 days after ruling on dispositive motions
Jury Trial	14 days after final pretrial conference

(b) The NFL's Proposed Schedule

The NFL respectfully submits the proposed schedule set forth below. The main area of disagreement is the duration and process for discovery (Plaintiffs propose nine (9) months of simultaneous fact and expert discovery, whereas the NFL proposes six (6) months of discovery followed by expert discovery).

The following is the NFL's proposed schedule:

MOTION / EVENT	DEADLINE
NFL Files Motion to Dismiss	January 16, 2019

² See NFL's position below, Section 17(b).

MOTION / EVENT	DEADLINE
Hearing on Motion to Dismiss	March 21, 2019
Non-Expert Discovery Cutoff	Within 6 months of the decision on the NFL's Motion to Dismiss
Plaintiffs to identify any experts in support of class certification and list of issues that experts will cover	Within 4 months of the decision on the NFL's Motion to Dismiss
Class Certification Motion, disclosures of Plaintiffs' experts for class certification, and identification by Defendants of any experts in opposition to class certification and list of issues that experts will cover	Within 6 months of the decision on the NFL's Motion to Dismiss
Disclosures of Defendants' class certification rebuttal experts	Within 90 days of Plaintiffs' class certification expert disclosures
Disclosure of Plaintiffs' class certification reply experts (if necessary)	Within 30 days of Defendants' class certification rebuttal expert disclosures
Depositions of class certification experts	Within 45 days of Defendants' class certification rebuttal expert disclosures
Defendants' Response in Opposition to Class Certification Motion	Within 14 days of completion of class certification expert depositions
Class Certification Hearing	Within 60 days of Defendants' filing of their Response in Opposition to Class Certification Motion
Disclosure of list of issues on which any party intends to offer expert testimony in its case-in-chief	28 days before opening reports are disclosed
Designation of expert testimony and disclosure of full expert reports under FRCP 26(a)(2) as to any issue on which a party has the burden of proof ("opening reports")	Within 2 weeks of the hearing on class certification
Disclosure of expert reports in opposition to opening reports ("opposition reports")	Within 21 days of disclosure of opening reports
Disclosure of reply reports rebutting specific material in opposition reports ("reply reports")	Within 14 days of disclosure of opposition reports
Expert Discovery Cutoff	Within 14 days of disclosure of reply reports
Dispositive Motions Due	Within 3 months of expert discovery cutoff

MOTION / EVENT	DEADLINE
Final Pretrial Conference	Within 2 months of rulings on dispositive motions
Jury Trial	14 days after final pretrial conference

18. Trial

The case will be tried to a jury. The Parties anticipate the trial will take four weeks.

19. Disclosure of Non-Party Interested Entities or Persons

On May 20, 2014, Plaintiffs filed their Certificate of Interested Entities or Persons Pursuant to Civil Local Rule 3-15, in which Plaintiffs certified that, as of that date, other than named parties and class members, there is no such interest to report.

On August 13, 2014, the NFL filed its Certificate of Interested Entities or Persons Pursuant to Civil Local Rule 3-15, in which it certified that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding, and stated as follows:

The NFL is an unincorporated association of 32 member clubs. Each member club is separately owned. It is possible that the interests of the member clubs, or some of them, could be affected by the outcome of this proceeding. Thus, in the interests of full disclosure and to aid the Court, the NFL hereby identifies each of the 32 NFL member clubs and its owner(s) as non-party potentially interested entities.

CLUBS	ENTITIES
Arizona Cardinals	Arizona Cardinals Football Club LLC; Arizona Cardinals Holding Company LLC
Atlanta Falcons	Atlanta Falcons Football Club, LLC
Baltimore Ravens	Baltimore Ravens Limited Partnership; Baltimore Football Company LLC (general partner)
Buffalo Bills	Buffalo Bills, Inc.
Carolina Panthers	Panthers Football, LLC; P.F.F., Inc. (general partner)

CLUBS	ENTITIES
Chicago Bears	The Chicago Bears Football Club, Inc.
Cincinnati Bengals	Cincinnati Bengals, Inc.
Cleveland Browns	Cleveland Browns Football Company LLC
Dallas Cowboys	Dallas Cowboys Football Club, Ltd.; JWJ Corporation (general partner)
Denver Broncos	PDB Sports, Ltd. d/b/a Denver Broncos Football Club; Bowlen Sports, Inc. (general partner)
Detroit Lions	The Detroit Lions, Inc.
Green Bay Packers	Green Bay Packers, Inc.
Houston Texans	Houston NFL Holdings, L.P.; RCM Sports and Leisure, L.P. (general partner); Houston NFL Holdings G.P., L.L.C. (general partner of RCM Sports)
Indianapolis Colts	Indianapolis Colts, Inc.
Jacksonville Jaguars	Jacksonville Jaguars, LLC; TDJ Football, Ltd. (general partner); Dar Group Investments, Inc. (general partner of TDJ Football)
Kansas City Chiefs	Kansas City Chiefs Football Club, Inc.
Miami Dolphins	Miami Dolphins, Ltd.; South Florida Football Corporation (general partner)
Minnesota Vikings	Minnesota Vikings Football, LLC
New England Patriots	New England Patriots LLC
New Orleans Saints	New Orleans Louisiana Saints, L.L.C.; Benson Football, Inc. (general partner)
New York Giants	New York Football Giants, Inc.
New York Jets	New York Jets LLC
Oakland Raiders	The Oakland Raiders; A.D. Football, Inc. (general partner)
Philadelphia Eagles	Philadelphia Eagles, LLC
Pittsburgh Steelers	Pittsburgh Steelers LLC
St. Louis Rams	The St. Louis Rams, LLC ³
San Diego Chargers	Chargers Football Company, LLC; Alex G. Spanos (general partner)

³ Since 2014, both the Rams and Chargers have changed locations; both are now in Los Angeles. The entity associated with the Rams is now referred to as The Los Angeles Rams, LLC.

CLUBS	ENTITIES
San Francisco 49ers	Forty Niners Football Company LLC; San Francisco Forty Niners, LLC (general partner)
Seattle Seahawks	Football Northwest LLC
Tampa Bay Buccaneers	Buccaneers Limited Partnership; Tampa Bay Broadcasting, Inc. (general partner)
Tennessee Titans	Tennessee Football, Inc.; Cumberland Football Management, Inc. (general partner)
Washington Redskins	Pro-Football, Inc.

20. Other Matters

The Parties have no other matters to discuss at this time.

DATED: March 14, 2019

Respectfully Submitted:

SILVERMAN, THOMPSON, SLUTKIN, WHITE, LLC
NAMANNY BYRNE & OWENS, P.C.

By: /s/ William N. Sinclair
WILLIAM N. SINCLAIR
Attorneys for PLAINTIFFS

DATED: March 14, 2019

Respectfully Submitted:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Jack P. DiCanio
JACK P. DICANIO
Attorneys for Defendant
NATIONAL FOOTBALL LEAGUE

ATTESTATION

I, Jack P. DiCanio, am the ECF User whose identification and password are being used to file this **JOINT CASE MANAGEMENT STATEMENT**. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that all signatories have concurred in this filing.

DATED: March 14, 2019

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

By: /s/ Jack P. DiCanio
JACK P. DICANIO
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NATIONAL FOOTBALL LEAGUE